

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **CHAIRMAN JOHN COBB**, on February 12, 2003 at 3:00 P.M., in Room 335 Capitol.

**ROLL CALL**

**Members Present:**

Sen. John Cobb, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Kelly Gebhardt (R)  
Sen. Carolyn Squires (D)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Pat Murdo, Legislative Branch  
Mona Spaulding, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 339, 2/6/2003; SB 355, 2/7/2003  
Executive Action: None.

**HEARING ON SB 339**

**Sponsor:** SENATOR MIKE COONEY, SD 26, HELENA

**Proponents:** Verner Bertelsen, MSCA; Matt Leow, Montana Public Interest Research Group (Mont-PIRG); Mark Mackin; Doug Mitchell

**Opponents:** None

**Informational Witnesses:** Dulcy Hubbert, Office of the Commissioner of Political Practices (COPP); Jim Scheier, COPP

**Opening Statement by Sponsor:** **SENATOR MIKE COONEY** introduced SB 339, the Montana Voluntary Campaign Limits Act, as an attempt to get a grip on money spent in campaigns. The Supreme Court has ruled that money spent in campaigns can't be limited. Limits can be put on how much money is collected. SB 339 is an attempt to set spending limits by voluntary compliance. **SEN. COONEY** said spending limits were established in SB 339 by using historical data, but they are intended as a starting point and are up for discussion. He said some inflationary capability was needed. SB 339 sets penalties if someone voluntarily complied with spending limits and then exceeded them. It specifies how fines are paid and where funds are deposited, which will be in a special revenue account at the office of Commissioner of Political Practices (COPP). Upon notification that a spending limit has been exceeded, the COPP will take appropriate action. If a candidate and opponent have both signed the spending limit pledge, and one exceeds the limit, in the interest of fairness there is an escape clause for the candidate in compliance.

A filing fee incentive has been established for candidates who agree to voluntary spending limits. The candidate who voluntarily limits spending will pay 1% of the annual salary paid to the office, and the candidate who doesn't will pay 2%. In either case, filing fees for legislators will be raised from the flat \$15.00 fee. **SEN. COONEY** said the fee change is long overdue. Currently filing fees go to the Secretary of State. SB 339 makes provision for the increase in fees collected to go to the COPP.

A candidate who does not endorse spending limits must make that declaration on all campaign materials. If a candidate does endorse spending limits, he or she may choose to declare it on campaign materials, but it is not required.

If a candidate exceeds voluntary spending limits, and fails to pay the fine, his or her name can be withheld from the ballot printing. If a problem comes up at the end of a campaign and isn't resolved by the candidate, the COPP can advise the Secretary of State not to certify the office. This remedy exists under current law, but SB 339 gives the COPP mechanisms to handle it.

**SEN. COONEY** said he totally believed something like SB 339 was necessary to restore public faith in the political system. He said voluntary participation was necessary because the Supreme Court has ruled that spending limits can only be limited if campaigns are publicly funded. Certain Constitutional protections are in SB 339. It is modeled after the New Hampshire program.

**Proponents' Testimony:** **Verner Bertelsen**, MSCA and former Secretary of State, said SB 339 provides an opportunity for those who are sincere in wanting to curb campaign spending. He said spending was getting out of hand. Current spending levels create

a real problem for ordinary citizens to take part in the political process.

**Doug Mitchell**, representing himself, rose in support of SB 339 saying it was a bad personal business decision since the Mitchell Group does work with political candidates. He believes there is too much money in politics, and people are disillusioned. **Mr. Mitchell** said this was not a new idea, but was first introduced in 1989 by **SEN. COONEY**. He said the Committee had the eternal choice: to try to do something, or to do nothing. He said the COPP does a great job, but with the legislative filing fee set at \$15, legislators aren't paying their freight.

**Matt Leow**, **Montana Public Interest Research Group (Mont-PIRG)**, rose in support of SB 339 saying it would help restore trust, and help people without a lot of money to participate as candidates.

**Mark Mackin**, **Helena valley**, representing himself, said SB 339 was a good idea. It offers a way for candidates to start working together. It will start a conversation about how the spending limit problem should be handled. **EXHIBIT(sts31a01)**

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:** **SENATOR MICHAEL WHEAT** asked what would happen if a candidate wanted to embrace voluntary spending limits, but his or her opponent didn't. **SEN. COONEY** said there was no escape clause, but the situation could be used as a campaign issue.

**SEN. WHEAT** said he didn't think that would work. He said a mechanism was needed in the bill so that both candidates could find a comfort zone. **SEN. COONEY** said he would be willing to look at an amendment. He said in New Hampshire all but a few candidates voluntarily complied. **SEN. COONEY** said voters would pay attention.

**SEN. WHEAT** asked why the candidate who agrees to comply couldn't have a way to opt out, and still use that against his or her opponent. He said it makes sense because the way the bill is written if both candidates voluntarily sign the spending limit agreement and one exceeds it, the other candidate can opt out.

**SENATOR MIKE SPRAGUE** suggested an if-and-only-if clause. He said the media needed to be involved in campaign spending limit solutions.

**SEN. WHEAT** said he liked the concept of SB 339, but the "devil's in the details." He asked why the decision to voluntarily comply couldn't be left open until an opposing candidate declared, rather than having to make the decision at the time of filing. He said there has to be some way to keep one

person from having an advantage. **SEN. COONEY** said that was a valid point, but someone will find some way to undo most anything. Nevertheless, it was good to build in safeguards.

**SENATOR KELLY GEBHARDT** asked how value would be set for in-kind materials and services. **SEN. COONEY** said current practice tried to make candidates set a realistic value on those things now.

**SEN. SPRAGUE** asked why an incumbent candidate would sign the voluntary pledge. **SEN. COONEY** said SB 339 was good for all candidates, because it was good public policy. Personally, he would sign to keep from having to spend so much time raising money.

**SEN. SPRAGUE** questioned the 1% filing fee issue, saying it wasn't a good recruiting message. **SEN. COONEY** said incentives were needed. Filing fees are one way to build in incentives, and 1% is the standard fee above the legislative candidate level. He said the COPP also needed additional revenue, and the current \$15.00 fee was ridiculous.

**SEN. SPRAGUE** asked **SEN. COONEY** to think about getting the media involved in the solution. **SEN. COONEY** said he would address it in his close.

**SEN. GEBHARDT** asked why candidates running for Governor, Secretary of State and the U.S. Senate, who all address the same number of voters, have such divergent spending limits. **SEN. COONEY** said he was willing to have that discussion. The figures used, however, are based on what has been spent in the past. People will give more money to a Gubernatorial campaign than to Secretary of State. The figures used in SB 339 are historical starting points. **SEN. GEBHARDT** said if he ran for U.S. Senate, he would have no name recognition, which should be considered an offsetting factor.

**SEN. WHEAT** suggested that a percentage, not a formula, be used on Page 2, Lines 11-14. **SEN. COONEY** said other methods of calculation had been considered. The flat percentage is commonly used.

**SEN. WHEAT** asked how much extra work was involved for the COPP. **SEN. COONEY** said not much. If limits are exceeded, the COPP will notify candidates. Candidates will then notify the Secretary to State (SOS), and the SOS will notify other candidates involved. He said the biggest consequence might be legal fees for complaints that might be filed.

**SEN. WHEAT** asked about a fiscal note. **SEN. COONEY** said Budget and Planning is taking another look at the fiscal note.

**Closing by Sponsor:** **SEN. COONEY** said money was driving people from the political system. He agreed with **SEN. SPRAGUE** regarding the media, but he thinks the media has become more involved. More candidates are on the air in forums, and the media is mindful of

the need for improvement. Speaking to **SEN. GEBHARDT's** concern for disparate spending limit amounts, **SEN. COONEY** said he had failed to mention that contribution limits are different by law for those offices now, which substantially affects the ability of some candidates to raise money. He asked the Committee to send SB 339 to the Senate floor for debate.

#### HEARING ON SB 355

**Sponsor:** **SENATOR DAN MCGEE, SD 11, LAUREL**

**Proponents:** **Steve Anderson**, Montana Assoc. of Registered Land Surveyors (MARLS); **Jim Kembel**, MARLS; **Stewart Nash**, MARLS; **Dorothy Stevens**

**Opponents:** none.

**Informational Witnesses:** **Jim Currie**, Montana Department of Transportation (MDOT)

**Opening Statement by Sponsor:** **SENATOR DAN MCGEE** brought SB 355 on behalf of the Montana Association of Registered Land Surveyors (MARLS) for the preservation of monuments. He said, a contractor called **One Call Locate** in order to mark facilities before digging. Property corners present a similar concern. SB 355 requires property corners be referenced before they are disturbed so that they can be reestablished. **SEN. MCGEE** gave some examples representing the problem. The Billings east-west line is a latitudinal arc, which is a curve. Grand Avenue in Billings placed survey markers in the middle of the street. People had property defined by two miles of markers that were destroyed in Grand Avenue construction. In order to redefine property boundaries, first the Grand Avenue markers have to be reestablished. He said resetting corners takes time which is money. It is a significant cost that comes back on land owners. The State already references corners for all kinds of facilities in the ground by using **One Call Locate**, and when work is completed, reestablishes corners. In the case of Grand Avenue, the corners could have been referenced in a day and put back after construction in a day. SB 355 is not a self-serving bill for MARLS. Preserving monuments impacts someone every time a marker placement is moved or destroyed.

**Proponents' Testimony:** **Steve Anderson**, President, South-Central Chapter, Montana Association of Registered Land Surveyors (MARLS), said monuments are important to Montana's land system, but present law doesn't protect them. Local governments are required to protect monuments, but it isn't being done. Local

governments are logical entities to monitor monuments. Every local government would need ordinances, and then there would not be standard operating rules.

When a monument is destroyed, harm occurs in three ways: 1) public data on land locations are compromised, 2) the cost is borne by the person needing the survey, and 3) it is inefficient. One surveyor may establish a monument that has been destroyed in order to complete a survey, but another surveyor may have to establish the very same monument again to complete a different land survey. Missing monuments are not replaced after they have been relocated in order to establish contract surveys. **Mr.**

**Anderson** said it was fair for the cost of replacing monuments to be borne by those who do the damage.

**Mr. Anderson** said that 70-22-104 pertained to the public land survey system corners. He suggested that SB 355 be amended to include 70-22-105, which pertains to corner record filings for any corner.

**Dorothy Stevens, Helena, representing herself**, testified to a problem involving property boundaries that she has been dealing with for five years. A marker was moved in an alley. Later the disturbed marker was used to define a construction boundary. When the boundary was disputed, the city arbitrarily replaced the marker in the middle of the road. {Tape: 2; Side: A} There has been an expenditure of money and time, and there is an issue of fairness to property owners.

**Stewart Nash, Past President of MARLS**, said he had worked as a registered surveyor in several states and British Columbia during the past thirty years. Keeping contractors from destroying monuments is ubiquitous. The biggest perpetrators are road contractors, utility contractors and telephone companies. Monuments are often found loose, having been dug up and put back into loose dirt. Without re-surveying, there is no way to know if it sits correctly. **Mr. Nash** said there was no way to identify persons or entities that move or destroy monuments. Often it takes place without anyone's knowledge. Some way is needed to address the problem so that responsibility can be attributed after the fact.

**Opponents' Testimony:** None.

**Informational Witness:** **Jim Currie, Montana Department of Transportation (MDOT)**, said the fiscal note showed no impact, but there is a cost. He estimated that one million dollars a year, or more, would be spent on surveys if this legislation passed. If money is spent up-front for surveys on a construction project, that amount of money will not be available for actual construction costs. He said he was neutral on the bill.

**Questions from Committee Members and Responses:** **SEN. SPRAGUE**

asked what the one million dollar estimate was based on. **Mr.**

**Currie** said there was a fiscal note. A construction project won't cost any more money to complete whether money is spent on construction or pre-construction, which include survey costs. SB 355 would have the effect of shifting funds from construction to pre-construction.

**SEN. SPRAGUE** asked if there isn't already a responsibility for the State to take financial responsibility for reestablishing those monuments that are moved or destroyed on State construction projects. **Mr. Currie** said according to current law, monuments are not reestablished. Everyone agrees there is a problem, but no one has responsibility. Monuments are not reestablished unless a property owner asks to have corners reset, then the State will reestablish a monument for that property owner.

**SEN. WHEAT** said he understood part of the problem, but typically--especially for residential property--surveyors weren't needed and the problem wasn't usually serious. **SEN. MCGEE** said that was wrong. It is a serious problem in every class of property ownership. He gave the example of 10th Avenue South in Great Falls. All the property owners along 10th Avenue South were affected by the road construction. Most people aren't aware there is a problem until it becomes a dispute. If corners are lost, the ability to define boundaries is lost, and that is a large problem.

**SEN. WHEAT** said the language of SB 355 was mandatory, and asked what would happen if there was a violation. **SEN. MCGEE** said the liability and responsibility for locating corner posts is in the purview of surveyors as professionals. He said he once stood on a monument to keep a bulldozer from wiping it out. **SEN. WHEAT** said SB 355 seemed like a recipe for litigation. **SEN. MCGEE** said when a survey he was taking was in conflict with utilities, he always called **One Call Locate** before starting. That language is already in statute. If someone decides to start digging without calling **One Call Locate**, the onus of responsibility is on their back. SB 355 would require the same care.

**SEN. WHEAT** asked what unintended consequences there might be. He said a duty was being established and asked if MDOT had an opinion. **Mr. Currie** said yes, if monuments are established, MDOT is willing to own the liability, and will contract with a registered surveyor to have it done.

**SEN. GEBHARDT** asked why people who are qualified, but not registered, could not be included in SB 355, and what were the penalties under SB 355 for disturbing a monument. **Mr. Currie** said the penalty for disturbing a monument is a misdemeanor--criminal mischief. Every destruction is a separate offense.

**SEN. SPRAGUE** said he thought SB 355 was to protect roadway monuments. He asked what was required of the subcontractor, and if that would affect the one million dollar pre-construction

cost. **Mr. Currie** said MDOT contracts with firms all over the state. For example, in Cooke City there were two contracts that stipulated corner positions would be reestablished. In Belt, several property owners wanted corners located on new right-of-way lines. He said if a land owner is a good negotiator, then their corners are reestablished. **Mr. Currie** said if corners are located in advance of construction it is a fairly simple procedure. If monuments are destroyed first, then back-pins are used--assuming they are there. The State is doing that now, though it wasn't done in the past. **Mr. Currie** said he didn't know the exact amount, but pre-construction minimums typically ran 10-12% of contracts, not including condemnation costs. If part of the negotiation was to reestablish monuments, it would be a separate issue.

**Closing by Sponsor:** **SEN. MCGEE** said similar legislation was brought in 1997 and 1999, but was killed on the Senate floor both times. He said the bill has no cost to local government. **{Tape: 2; Side: B}** **SEN. MCGEE** said the other case in point was the 1860 Homestead Act, where claims were made that surveys were done, but they never were. That is still a problem in parts of the State, including Roundup and the Musselshell River. He said SB 355 was important legislation.

**Discussion:** **SEN. SPRAGUE** suggested a conceptual amendment to include 70-22-105.

**CHAIRMAN COBB** said executive action would be taken Friday without amendments.

**SEN. MCGEE**, the sponsor, requested amendments to include property corners as well as monuments.



**ADJOURNMENT**

Adjournment: 4:30 P.M.

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SEN. JOHN COBB, Chairman

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MONA SPAULDING, Secretary

JC/MS

**EXHIBIT (sts31aad)**